While almost all American courts agree that this claim to the residuary realty descends as realty, many refuse to recognize it as a present right in real estate,[10] and hold that a partner's interest in a firm owning realty may be transferred as personalty,[11] that the wives have no inchoate right of dower,[12] and that judgments against the individual partners do not affect their interest in firm realty.[13] In explaining these decisions the courts have advanced the doctrine that the partner's interest is personalty during the firm's existence, and is not reconverted into realty until it is determined that it will be unnecessary to sell the land in winding up the firm. Such a result seems opposed to the cases which decide that the nature of a *cestui's* right for purposes of descent is determined at his decease.[14] Furthermore, it is of doubtful propriety where no writing evidences such an agreement.[15]

SUIT UNDER FOREIGN STATUTE GIVING THE "PERSONAL REPRESENTATIVE" THE RIGHT TO RECOVER FOR DEATH BY WRONGFUL ACT. — It is established by the weight of authority that, as a general rule, suit may be brought in a foreign jurisdiction upon a cause of action arising under a statute giving damage for death by wrongful act.[1] As the obligation sued on is raised wholly by the statute of the place where the injury occurred, that statute governs as to the party to bring suit.[2] When the statute gives the right of action to the "personal representative" of the deceased, inasmuch as there may be different administrators in different jurisdictions, a further question arises as to which administrator should sue.

Perhaps the most probable intent of a legislature in using the phrase "personal representative" is to designate the representative appointed in its own state; that is, in the *locus delicti*, since such a statute applies only to death caused within the jurisdiction.[3] Certainly no case has arisen in which a court, in construing its own statute, has so interpreted it as to deny a right of action to the administrator of the *locus delicti;*[4] and in this, as in other cases of statutory interpretation, the construction given to a statute by the courts of the jurisdiction in which the statute was passed should be

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[10] But see Shearer *v.* Shearer, *supra;* Hewitt *v.* Rankin, 41 Ia. 35.

[11] Greenwood *v.* Marvin, 111 N. Y. 423; Morril *v.* Colehour, 82 Ill. 618; Marsh *v.* Davis, 33 Kan. 326.

[12] Woodward-Holmes Co. *v.* Nudd, 58 Minn. 236.

[13] Meily *v.* Wood, 71 Pa. St. 488. But see Hewitt *v.* Rankin, *supra.*

[14] See *In re* Raw, 26 Ch. D. 601; Carr *v.* Collins, 7 Jur. 165; Harding *v.* Trotter, 1 W. R. 502. See PARSONS, PARTNERSHIP, 4 ed., 361 n; 23 HARV. L. REV. 70. It cannot properly be said that the surviving partner has an uncontrolled discretion as to the sale of firm realty. See Young *v.* Thrasher, 115 Mo. 222.

[15] The courts, however, are generally not troubled by the absence of a writing. See Marsh *v.* Davis, *supra;* Buckley *v.* Doig, 188 N. Y. 238.

[1] Texas & Pacific Ry. Co. *v.* Cox, 145 U. S. 593. See 3 HARV. L. REV. 116–125; 16 HARV. L. REV. 63.

[2] Usher *v.* West Jersey R. R. Co., 126 Pa. St. 206. But see Stewart *v.* Baltimore & Ohio R. R. Co., 168 U. S. 445. The latter case is criticised in Williams *v.* Camden Interstate Ry. Co., 138 Fed. 571.

[3] Hall *v.* Southern Ry. Co., 146 N. C. 345.

[4] In some cases it is held that an administrator may be appointed in the *locus delicti* for the purposes of bringing suit under these statutes even though the deceased has left no assets in that jurisdiction. *In re* Mayo's Estate, 60 S. C. 401.

governing.[5] Granting, however, that the administrator of the *locus delicti* may sue, this interpretation does not necessarily exclude all others. Thus courts have construed their own statutes as also allowing the domiciliary administrator to sue, although the domicile and the *locus delicti* are not coincident.[6] But if either or both of these interpretations were adopted as excluding others, it would be impossible to sue in many foreign jurisdictions. For the rule that letters of administration, granted in one state, will not be recognized elsewhere, which precludes an administrator from suing, as such, in a foreign jurisdiction, has been held to apply to an administrator suing under these statutes.[7] This seems, however, to be a wrong application of the rule. The common statute giving an action for death by wrongful act, copied after Lord Campbell's Act, creates a new cause of action, so that the administrator suing under it is not enforcing a claim which has survived to him from his intestate;[8] he is suing as trustee for named beneficiaries, and not as administrator of the deceased.[9] But whether wrongfully applied in this connection or not, this rule is doubtless the cause of frequent holdings that the administrator of the jurisdiction in which action is brought is a proper plaintiff under these statutes, even though he has not, previous to the suit, been appointed administrator, either in the jurisdiction where the injury took place or at the domicile of the deceased.[10]

In no cases to this effect, however, was the court construing its own statute; but the meaning of such decisions would seem to be at least an implied assent by the court that the statute of its own jurisdiction should receive a similar construction at the hands of foreign courts. Certainly such a construction, although it may seem somewhat forced, reaches a fair result. In the recent New York case of *Pietraroia* v. *New Jersey and Hudson River Ry. & Ferry Co.*, 42 N. Y. L. J. 2123, the court adopted this construction, while dismissing the suit on the ground that the plaintiff had been appointed administrator solely for the purpose of getting the suit into the New York courts. But this qualification seems to be merely an extension of the somewhat exceptional New York doctrine that in the absence of special circumstances jurisdiction will not be taken of a suit between foreigners as to a foreign tort.[11]

PRESCRIPTION BETWEEN STATES. — Following the maxim, *nullum tempus occurrit regi*, it is a well settled principle of common law that lapse of time does not bar the sovereign from enforcing his rights.[1] As successors

[5] Fowler *v.* Lamson, 146 Ill. 472. See 2 SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed., § 319.

[6] Robertson *v.* Chicago, St. Paul, Minneapolis, & Omaha Ry. Co., 122 Wis. 66. *Contra*, Hall *v.* Southern Ry. Co., *supra*.

[7] Brooks *v.* Southern Pacific Co., 148 Fed. 986.

[8] See 15 HARV. L. REV. 854.

[9] For these reasons the foreign administrator was allowed to sue in Connor *v.* New York, New Haven, & Hartford R. R. Co., 28 R. I. 560; Boulden *v.* Pennsylvania R. R. Co., 205 Pa. St. 264; Kansas Pacific Ry. *v.* Cutter, 16 Kans. 568.

[10] Dennick *v.* Railroad Co., 103 U. S. 11; Leonard *v.* Columbia Steam Navigation Co., 84 N. Y. 48; *In re* Lowham's Estate, 30 Utah 436.

[11] Collard *v.* Beach, 93 N. Y. App. Div. 339. See 19 HARV. L. REV. 618.

[1] See ANGELL, LIMITATIONS, 6 ed., pp. 30–36; Case of Magdalen College, 11 Co. 66 b, 74 b.